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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/838,330

Applicant(s)

MARKS ET AL.

Examiner

LISA HASHEM

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-7,9,10,13-20 and 23-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-7,9,10,13-20,23-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see RCE, filed 7-17-2006, with respect to the rejection(s) of claim(s) 1, 2, 5-7, 9, 10, 13-20, and 23-27 under U.S. Patent No. 6,587,127 by Leeke have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made. Please see all rejection(s) below.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 recites the limitation "the time availability" in lines 22-23. There is insufficient antecedent basis for this limitation in this claim.

4. Claim 1 recites the limitation "the moment" in lines 23-24. There is insufficient antecedent basis for this limitation in this claim.

5. Claim 1 recites the limitation "the sequence of items played" in line 25. There is insufficient antecedent basis for this limitation in this claim.

6. Claim 10 recites the limitation "the style" in line 2. There is insufficient antecedent basis for this limitation in this claim.

7. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the preamble of claim 9, '...a personalized playlist...', is not represented in the body of the claim. The claim fails to mention anything about creating a personalized playlist. See MPEP 2111.02.

Claim 9 recites: '...the user deletes items of content from the playlist of the base channel, whereby the deleted items comprise a negative user preference and a side channel derived from the base channel is created on the user device that reflects the negative user preference...'. It is not clear if claim 9 discloses the deleted items comprise a negative user preference and a side channel. The instant application discloses in lines 36-37 of page 2 '...The sidechannel playlist may be compiled based on preferences determined by which selections the user has previously skipped or deleted...'. Examiner recommends separating the limitation to read: '...the user deletes items of content from the playlist of the base channel, whereby the deleted items indicate a negative user preference; and a side channel derived from the base channel is created on the user device that reflects the negative user preference...'.

8. Claim 17 recites the limitation "the station" in line 2. There is insufficient antecedent basis for this limitation in this claim.

9. Claim 17 recites the limitation "the affiliate stations" in line 3. There is insufficient antecedent basis for this limitation in this claim.

10. Claim 20 recites the limitation "the provider" in lines 3-4 (the preamble) and in the body of the claim and the limitation "the program provider" in the body of the claim. There is insufficient antecedent basis for these limitations in this claim. It is unclear if the limitations refer to an audio provider or other providers recited in the preamble.

11. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 recites: '...substantially a same playlist...'. It is not clear what applicant means by the term 'substantially'.

Claim 20 recites: '...a user deletes undesired program items that are played on the base channel, a cumulative history of a user's deletions comprising a negative user preference...'. It is not clear if claim 20 discloses a user deletes undesired program items and a cumulative history. The instant application discloses in lines 36-37 of page 2 '...The sidechannel playlist may be compiled based on preferences determined by which selections the user has previously skipped or deleted...'. Examiner recommends separating the limitation to read: '...a user deletes undesired program items that are played on the base channel; a cumulative history of the user's deletions indicating a negative user preference is created...'.

12. Claim 24 recites the limitation "the station" in line 5. There is insufficient antecedent basis for this limitation in this claim.

13. Claims 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the preamble of claims 26 and 27, '...a personalized playlist...', is not represented in the body of the claim. The claims fail to mention anything about creating a personalized playlist. See MPEP 2111.02.

14. Claim 27 recites the limitation "the style" in line 9. There is insufficient antecedent basis for this limitation in this claim.

Claim Rejections - 35 USC § 102

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

16. Claim 1, 2, 5-7, 9, 10, 13-20, and 23-27 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by U.S. Patent No. 6,588,015 by Eyer et al, hereinafter Eyer.

Regarding claim 1, Eyer discloses a method for creation of a personalized playlist (i.e. the skipping, suppressing, or indicating dislike by the user influences the immediate playback stream or the preferences immediately are stored for future playback alteration) of programming (i.e. programming service streams including audio or music) (col. 8, lines 32-61; col. 12, lines 24-27; col. 16, lines 39-45), the playlist comprising sequentially played identifiable items of content (i.e. tracks or advertisement) (col. 10, line 42 – col. 11, line 35; col. 15, line 58 – col. 16, line 59) from available sources of program material (i.e. different audio sources; col. 5, lines 13-21) wherein:

a user selects a base channel (Figures 4-6: 400; Fig. 10, 1040; i.e. received data) (col. 5, lines 13-21; col. 7, lines 1-21) that includes a playlist of content (i.e. streams which have an associated default order of playback in the played data; Fig. 4, 450; Fig. 10, 1060) that may be played on a user device (Fig. 2, 200; i.e. digital radio receiver; col. 6, lines 8-61) (col. 10, line 42 – col. 11,

line 45; col. 16, lines 4-27), the playlist of the base channel being immediately unchangeable by a user and identical for a plurality of users (i.e. each customer receives the received data which have an associated default order of playback in the played data and is modulated on RF carrier which means the stream is accessible simultaneously; Fig. 4, 450; Fig. 10, 1060) (col. 7, lines 1-21; col. 10, line 42 – col. 11, line 45; col. 16, lines 4-27);

alternate sources of content (i.e. different programming streams of audio sources; col. 5, lines 13-21) offer substitute items (i.e. tracks) (col. 8, lines 32-61);

a customizer (Fig. 2, 230; i.e. CPU) operates with the user device to determine in near real time which substitute items are available for use (col. 8, lines 32-61), the availability of the substitute items being determined by at least two criteria, a first criterion comprising a style of the playlist of the base channel (i.e. representing the style of the stream sequence provider by virtue of playing of the same type of audio i.e. jazz or classical), and a second criterion comprising the time availability (i.e. real time) of substitute items provided by the alternate sources near the moment the customizer determines that a substitute item should be included in the sequence of items played (col. 8, line 62 – col. 9, line 23);

a first substitute item (i.e. track) from a first alternate source (i.e. another programming stream of an audio source) being buffered in a memory resource (Fig. 2: 235, 240; i.e. random access memory buffer (RAM)) (col. 6, lines 8-61) linked to the user device, the first substitute item being unidentified to the user unless it is played on the user device (col. 8, lines 32-61);

the base channel is a broadcast source (Figures 4-6: 400; Fig. 10, 1040; i.e. received data) that is available to a plurality of users of a data system (i.e. digital radio broadcasting system) (col. 5, lines 13-21; col. 7, lines 1-21);

the user being able to send a signal (i.e. skips, forwards, suppresses, or indicates dislike) items of content (i.e. tracks or advertisements) to delete an undesired item (i.e. track or advertisement) playing on the base channel (i.e. the user can press the skip forward button once or multiple times; the user can press the dislike button; the user can press the suppress commercial button) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45);

upon receipt of the signal the customizer automatically plays the substitute item and creates a side channel (Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080), the side channel includes the playlist of the base channel (Fig. 4, 450; Fig. 10, 1060), wherein the undesired item is absent from the playlist and a substitute item is played instead (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45).

Regarding claim 2, the playlist creation method of claim 1, wherein Eyer discloses the first substitute item (i.e. oldest stored track) is streamed by a first alternate source (i.e. another programming service stream) and a second substitute item (i.e. track after oldest stored track) is streamed from a second alternate source (i.e. another programming service stream) at a beginning later than a beginning of the first substitute item, and the second substitute item begins at the second alternate source before it is needed for play on the side channel (Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080), the second substitute item being a better fit to the second criterion than the first substitute item (i.e. second substitute item is still stored in buffer in real time), the first substitute item being removed from the memory resource in favor of the second substitute item (col. 8, lines 32-61; col. 15, lines 4-21).

Regarding claim 5, the playlist creation method of claim 1, wherein Eyer discloses an alternate source (i.e. different audio sources; col. 5, lines 13-21) comprises a hidden playlist (i.e.

next track on the current programming service stream or track on another programming service stream), a playlist of the hidden playlist is in the style of the base channel (i.e. representing the style of the stream sequence provider by virtue of playing of the same type of audio i.e. jazz or classical) (col. 7, lines 9-14), is initially unchangeable and identical for a plurality of users, is not available for use as a base channel (col. 8, lines 32-61), and serves a primary function of providing substitute items of content (i.e. tracks) for modification of the base channel (Fig. 4, 450; Fig. 10, 1060) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45).

Regarding claim 6, the playlist creation method of claim 1, wherein Eyer discloses the programming is audio programming, the deleted items of content are audio commercial announcements (i.e. advertisements) (Fig. 10: 1065, 1069), and the substitute items (i.e. tracks) are used to replace the audio commercials (col. 15, line 58 – col. 16, line 59).

Regarding claim 7, the playlist creation method of claim 1, wherein Eyer discloses a provider of the base channel (i.e. audio source of current programming stream) is identified on a display screen of the user device (col. 7, lines 1-21).

Regarding claim 9, Eyer discloses a method for creation of a personalized playlist (i.e. the skipping, suppressing, or indicating dislike by the user influences the immediate playback stream or the preferences immediately are stored for future playback alteration) of programming (i.e. programming service streams including audio or music) (col. 8, lines 32-61; col. 12, lines 24-27; col. 16, lines 39-45) played on a user device (Fig. 2, 200; i.e. digital radio receiver) with a memory resource (Fig. 2: 235, 240; i.e. random access memory buffer (RAM)) (col. 6, lines 8-61), the playlist comprising sequentially played identifiable items of content (i.e. tracks or

advertisement) (col. 10, line 42 – col. 11, line 35; col. 15, line 58 – col. 16, line 59) from available sources of program material (i.e. different audio sources; col. 5, lines 13-21) wherein: a user selects a base channel (Figures 4-6: 400; Fig. 10, 1040; i.e. received data) from a broadcast source (Fig. 1, 100; i.e. digital radio transmitter) (col. 5, lines 13-21; col. 7, lines 1-21) that includes a playlist of content (i.e. streams which have an associated default order of playback in the played data; Fig. 4, 450; Fig. 10, 1060) that may be played on the user device (col. 10, line 42 – col. 11, line 45; col. 16, lines 4-27), the playlist of the base channel being immediately unchangeable and identical for a plurality of users (i.e. each customer receives the received data which have an associated default order of playback in the played data and is modulated on RF carrier which means the stream is accessible simultaneously; Fig. 4, 450; Fig. 10, 1060) (col. 7, lines 1-21; col. 10, line 42 – col. 11, line 45; col. 16, lines 4-27); the user deletes (i.e. skips, forwards, suppresses, or indicates dislike) items of content (i.e. tracks or advertisements) from the playlist of the base channel (i.e. the user can press the skip forward button once or multiple times; the user can press the dislike button; the user can press the suppress commercial button), whereby the deleted items comprise a negative user preference (i.e. the skipping, suppressing, or indicating dislike influences the immediate playback stream or the preferences immediately are stored for future playback alteration) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45) and a side channel (Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080) derived from the base channel (Figures 4-6: 400; Fig. 10, 1040; i.e. received data) is created on the user device that reflects the negative user preference (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45).

Regarding claim 10, the playlist creation method of claim 9, wherein Eyer discloses further incorporating a hidden playlist (i.e. next track on the current programming service stream or track on another programming service stream) comprised of a playlist of items in the style of the base channel (i.e. representing the style of the stream sequence provider by virtue of playing of the same type of audio i.e. jazz or classical) (col. 7, lines 9-14), the playlist of the hidden playlist being immediately unchangeable and identical for a plurality of users (col. 8, lines 32-61), the hidden playlist being unavailable for use as a base channel wherein: undeleted items played on the base channel are played on the side channel in the same sequence and deleted items have been substituted on the side channel with items from the hidden playlist (Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45).

Regarding claim 13, the playlist creation method of claim 9, wherein Eyer discloses the negative user preference further comprises a set of instructions (i.e. control button) that is stored on a device of the user, the instructions being used to guide a customizer (i.e. CPU; Fig. 2, 230) in an initial selection of substitute items for the user (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45).

Regarding claim 14, Eyer discloses a method for creation of a personalized playlist (i.e. the skipping, suppressing, or indicating dislike by the user influences the immediate playback stream or the preferences immediately are stored for future playback alteration) of programming (i.e. programming service streams including audio or music) (col. 8, lines 32-61; col. 12, lines 24-27; col. 16, lines 39-45), the playlist comprising sequentially played items of content (i.e.

tracks or advertisement) (col. 10, line 42 – col. 11, line 35; col. 15, line 58 – col. 16, line 59) played on a user device (Fig. 2, 200; i.e. digital radio receiver) (col. 6, lines 8-61) wherein:

a user selects a broadcast base channel (Figures 4-6: 400; Fig. 10, 1040; i.e. received data) that includes a playlist of content (i.e. streams which have an associated default order of playback in the played data; Fig. 4, 450; Fig. 10, 1060) that may be played on the user device (col. 10, line 42 – col. 11, line 45; col. 16, lines 4-27), the base channel being provided by a source (Fig. 1, 100; i.e. digital radio transmitter) (col. 5, lines 13-21; col. 7, lines 1-21) that is operated independently of the user, the playlist of the base channel being immediately unchangeable and identical for a plurality of users (i.e. each customer receives the received data which have an associated default order of playback in the played data and is modulated on RF carrier which means the stream is accessible simultaneously; Fig. 4, 450; Fig. 10, 1060) (col. 7, lines 1-21; col. 10, line 42 – col. 11, line 45; col. 16, lines 4-27);

an alternate broadcast source of content (i.e. different audio sources; col. 5, lines 13-21) is available from which substitute items (i.e. tracks) may be obtained to modify the playlist of the base channel, a customizer (Fig. 2, 230; i.e. CPU) operates with the user device to determine in near real time which substitute items are available for use subject to at least two criteria, a first criterion comprising a style of the playlist of the base channel (i.e. representing the style of the stream sequence provider by virtue of playing of the same type of audio i.e. jazz or classical) and a second criterion comprising a time availability (i.e. real time) of substitute items a beginning point of a substitute item of the alternate source is stored in a computer memory resource (Fig. 2: 235, 240; i.e. random access memory buffer (RAM)) (col. 6, lines 8-61) immediately accessible by the user device (col. 8, line 62 – col. 9, line 23), and further component segments of the

substitute item of the alternate source are buffered in a computer memory facility (i.e. non-volatile memory) (col. 8, lines 32-61);

the substitute item being immediately played as part of the personalized playlist on the user device from the beginning point of the substitute item when an item from the base channel (Fig. 4, 450; Fig. 10, 1060) has been deleted (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45);

the alternate source comprising a hidden playlist (i.e. next track on the current programming service stream or track on another programming service stream) incorporating a playlist of items in the style of the base channel (i.e. representing the style of the stream sequence provider by virtue of playing of the same type of audio i.e. jazz or classical) (col. 7, lines 9-14), the hidden playlist is not available for use as a base channel, and the hidden playlist serving a primary function of providing items of content as components for use as substitutes in assembling personalized playlists (Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080) derived from the base channel (Fig. 4, 450; Fig. 10, 1060) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45).

Regarding claim 15, the playlist creation method of claim 14, wherein Eyer discloses the substitute item has two distinct types of value, a value of creative content (i.e. favorite tracks) and an opportunity value of time availability (i.e. real time play rate) for use as a substitute item in the personalized playlist (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45); a source (i.e. provider) providing a substitute item receiving an opportunity value payment when the substitute item is used in a personalized playlist derived from the base channel of a different source (i.e. source providing current programming stream) (col. 17, lines 13-49).

Regarding claim 16, Eyer discloses a method for creation of a personalized playlist (i.e. the skipping, suppressing, or indicating dislike by the user influences the immediate playback stream or the preferences immediately are stored for future playback alteration) of programming (i.e. programming service streams including audio or music) (col. 8, lines 32-61; col. 12, lines 24-27; col. 16, lines 39-45), the playlist comprising sequentially played items of content (i.e. tracks or advertisement) (col. 10, line 42 – col. 11, line 35; col. 15, line 58 – col. 16, line 59) wherein:

a user selects a broadcast base channel (Figures 4-6: 400; Fig. 10, 1040; i.e. received data) that includes a playlist of content (i.e. streams which have an associated default order of playback in the played data; Fig. 4, 450; Fig. 10, 1060) that may be played on a user device (Fig. 2, 200; i.e. digital radio receiver) (col. 6, lines 8-61; col. 10, line 42 – col. 11, line 45; col. 16, lines 4-27), the base channel (Fig. 4, 450; Fig. 10, 1060) being provided by a source (Fig. 1, 100; i.e. digital radio transmitter) (col. 5, lines 13-21; col. 7, lines 1-21) that is independent of the user, the base channel being identical and unchangeable for a plurality of users (i.e. each customer receives the received data which have an associated default order of playback in the played data and is modulated on RF carrier which means the stream is accessible simultaneously; Fig. 4, 450; Fig. 10, 1060) of a data system (i.e. digital radio broadcast system) (col. 7, lines 1-21; col. 10, line 42 – col. 11, line 45; col. 16, lines 4-27); an alternate broadcast source of content is available (i.e. different audio sources; col. 5, lines 13-21) from which substitute items (i.e. tracks) in a style of the base channel (i.e. representing the style of the stream sequence provider by virtue of playing of the same type of audio i.e. jazz or classical) (col. 7, lines 9-14) may be obtained to modify the playlist of the base channel (Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080), the substitute items being

used in a personalized playlist (i.e. modified playlist;) derived from the base channel (Fig. 4, 450; Fig. 10, 1060) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45); the sequence order of an item on the playlist of the base channel being identical to a sequence order of a same item or its substitute on the personalized playlist (i.e. only the suppressed commercial or disliked song is removed from the playback stream of the current programming service stream) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45); a customizer (Fig. 2, 230; i.e. CPU) operating with the user device to determine in near real time which substitute items are included in the personalized playlist (Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080), the customizer operating independently of a user's immediate actions (col. 8, lines 32-61);

a beginning point of an item of the alternate source is stored in a memory resource immediately accessible by the user device (Fig. 2: 235, 240; i.e. random access memory buffer (RAM)) (col. 6, lines 8-61), and further component segments of the item of the alternate source are buffered in a memory resource (i.e. non-volatile memory), an identity of the stored item being known by the customizer in advance of the stored item being included in the personalized playlist (Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45);

the stored item being played as part of the personalized playlist (Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080) on the user device from the beginning point of the stored item (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45).

Regarding claim 17, the playlist creation method of claim 16, wherein Eyer discloses the station (i.e. selected station or audio source) operates as an affiliate of a cooperative network (i.e.

digital radio broadcasting system) with other stations (i.e. different audio sources), the affiliate stations share playlists and a network operator (i.e. digital radio transmitter; Fig. 1, 100; col. 5, lines 13-21) oversees that cooperative stations are sharing playlists of similar value (col. 8, lines 3-16; col. 10, line 65 – col. 11, line 11; col. 17, line 50 - col. 18, line 6).

Regarding claim 18, the playlist creation method of claim 16, wherein Eyer discloses the customizer (Fig. 2, 230; i.e. CPU) is guided by a user's deletions (i.e. the user can press the skip forward button once or multiple times; the user can press the dislike button; the user can press the suppress commercial button) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45) and a style of the base channel (i.e. representing the style of the stream sequence provider by virtue of playing of the same type of audio i.e. jazz or classical) (col. 7, lines 9-14) when the customizer performs substitutions of items of content (i.e. tracks) into the personalized list (Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45).

Regarding claim 19, the playlist creation method of claim 16, wherein Eyer discloses an identity of the source (i.e. another programming service stream) providing a substitute item is displayed on the user device (col. 8, lines 49-61).

Regarding claim 20, Eyer discloses a method for navigating the programming of an audio program provider (i.e. source of programming service stream; col. 7, lines 1-15) affiliated with a network of other providers (i.e. multiple sources; col. 5, lines 14-21) in which the provider presents to a user a standardized method for searching, selecting and playing programming (i.e. a user or customer can search and select audio from service streams) (col. 7, line 1 - col. 8, line

14), the standardized method being specified by a network operator (Fig. 1, 100; i.e. digital radio transmitter; col. 5, line 13 – col. 6, line 7) wherein:

the provider offers a base channel (Figures 4-6: 400; Fig. 10, 1040; i.e. received data) accessible simultaneously by a plurality of users, wherein each user receives substantially a same playlist (i.e. each customer receives the received data which have an associated default order of playback in the played data and is modulated on RF carrier which means the stream is accessible simultaneously; Fig. 4, 450; Fig. 10, 1060) (col. 7, lines 1-21; col. 10, line 42 – col. 11, line 45; col. 16, lines 4-27);

a user deletes (i.e. skips, forwards, suppresses, or indicates dislike) undesired program items (i.e. tracks or advertisements) that are played on the base channel (i.e. the user can press the skip forward button once or multiple times; the user can press the dislike button; the user can press the suppress commercial button) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45), a cumulative history of a user's deletions comprising a negative user preference (i.e. dislike items are stored; col. 8, lines 32-61);

the provider offers an ability to create a first side channel (i.e. playback stream different from the default playback stream as shown in Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080) wherein an alternate personal playlist (i.e. modified playlist excluding selected deleted items) derived from the base channel is already prepared when the user deletes a first program item of the base channel (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45);

the first side channel (Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080) includes programming that reflects a combination of a style of the provider of the selected base channel (i.e. representing the style of the stream sequence provider by virtue of playing of the same type of audio i.e. jazz or classical)

(col. 7, lines 9-14), and the negative user preference (i.e. representing the user's preference by virtue of the skipped, suppressed, or dislike streams that are playing), wherein the user creates a personal playlist of programming in near real time by deleting items from the channel of the program provider (i.e. the skipping, suppressing, or indicating dislike by the user influences the immediate playback stream or the preferences immediately are stored for future playback alteration) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45).

Regarding claim 23, the playlist creation method of claim 16, wherein Eyer discloses a first playlist (Fig. 4, 450; Fig. 10, 1060) plays on the user device, the customizer (i.e. CPU) creates a second, alternate playlist (Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080) before an item of the first playlist begins (i.e. order of second playlist is already prepared by virtue of its pre-buffering), the second playlist begins immediately when the user deletes the item (i.e. track D or advertisement) of the first playlist (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45).

Regarding claim 24, the playlist creation method of claim 16, wherein Eyer discloses the substitute items (i.e. tracks) have two distinct types of value, a value of creative content (i.e. favorite tracks) and an opportunity value of time availability (i.e. real time play rate) for use as a substitute item in the personalized playlist (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45), and a provider of the alternate source receives an opportunity value payment from the station when the item is used in the personalized playlist (i.e. source providing current programming stream) (col. 17, lines 13-49).

Regarding claim 25, the playlist creation method of claim 23, wherein Eyer discloses the second alternate playlist is discarded when the user allows the item of the first playlist to play

through (i.e. track D or advertisement) (Fig. 4, 450; Fig. 10, 1060) (col. 10, lines 42-64; col. 15, lines 4-21; col. 16, lines 14-18), and the customizer creates a third alternate playlist (i.e. order of third playlist is already prepared by virtue of its pre-buffering) (Fig. 7, 750; col. 13, lines 22-67).

Regarding claim 26, Eyer discloses a method for creation of a personalized playlist (i.e. the skipping, suppressing, or indicating dislike by the user influences the immediate playback stream or the preferences immediately are stored for future playback alteration): of programming (i.e. programming service streams including audio or music) (col. 8, lines 32-61; col. 12, lines 24-27; col. 16, lines 39-45) played on a user device (Fig. 2, 200; i.e. digital radio receiver) (col. 6, lines 8-61), the playlist comprising sequentially played identifiable items of content (i.e. tracks or advertisement) (col. 10, line 42 – col. 11, line 35; col. 15, line 58 – col. 16, line 59) from available sources of program material (i.e. different audio sources; col. 5, lines 13-21) wherein: a user selects a base channel (Figures 4-6: 400; Fig. 10, 1040; i.e. received data) (col. 7, lines 1-21) that includes a playlist of content (i.e. streams which have an associated default order of playback in the played data; Fig. 4, 450; Fig. 10, 1060) that may be played on a user device (Fig. 2, 200; i.e. digital radio receiver) (col. 10, line 42 – col. 11, line 45; col. 16, lines 4-27), the playlist of the base channel being immediately unchangeable by a user and identical for a plurality of users (i.e. each customer receives the received data which have an associated default order of playback in the played data and is modulated on RF carrier which means the stream is accessible simultaneously; Fig. 4, 450; Fig. 10, 1060) (col. 7, lines 1-21; col. 10, line 42 – col. 11, line 45; col. 16, lines 4-27); alternate sources of content (i.e. different audio sources; col. 5, lines 13-21) offer substitute items (i.e. tracks) in a style of the base channel (i.e. representing the style of the stream sequence

provider by virtue of playing of the same type of audio i.e. jazz or classical) (col. 7, lines 9-14; col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45); the user deleting (i.e. skipping, forwarding, suppressing, or indicating dislike) an item of content (i.e. tracks or advertisements) on the base channel (i.e. the user can press the skip forward button once or multiple times; the user can press the dislike button; the user can press the suppress commercial button) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45); a customizer (Fig. 2, 230; i.e. CPU) automatically causing the user device to play a substitute item from the alternate sources and creating a side channel (i.e. modified playlist excluding selected deleted items; Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080) comprising a modified base channel (Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080), the side channel including sequences of items identical to sequences of items of the base channel (Fig. 4, 450; Fig. 10, 1060) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45); the deleted item (i.e. track or advertisement) being absent from a playlist of the side channel, the substitute item (i.e. track) being played instead of the deleted item, a further item being not deleted from the base channel, and the further item being played on the side channel in a same sequence of the playlist as the further item played on the base channel (i.e. only the suppressed commercial or disliked song is removed from the playback stream of the current programming service stream) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45).

Regarding claim 27, Eyer discloses a method for creation of a personalized playlist (i.e. the skipping, suppressing, or indicating dislike by the user influences the immediate playback stream or the preferences immediately are stored for future playback alteration) of programming (i.e. programming service streams including audio or music) (col. 8, lines 32-61; col. 12, lines

24-27; col. 16, lines 39-45) played on a user device (Fig. 2, 200; i.e. digital radio receiver) (col. 5, lines 13-21; col. 7, lines 1-21), the playlist comprising sequentially played identifiable items of content (i.e. tracks or advertisement) (col. 10, line 42 – col. 11, line 35; col. 15, line 58 – col. 16, line 59) from available sources of program material (i.e. different audio sources; col. 5, lines 13-21) wherein:

a user selects a base channel (Figures 4-6: 400; Fig. 10, 1040; i.e. received data) (col. 7, lines 1-21) that includes a playlist of content (i.e. streams which have an associated default order of playback in the played data; Fig. 4, 450; Fig. 10, 1060) that may be played on a user device (Fig. 2, 200; i.e. digital radio receiver; col. 6, lines 8-61) (col. 10, line 42 – col. 11, line 45; col. 16, lines 4-27), the playlist of the base channel being immediately unchangeable by a user and identical for a plurality of users (i.e. each customer receives the received data which have an associated default order of playback in the played data and is modulated on RF carrier which means the stream is accessible simultaneously; Fig. 4, 450; Fig. 10, 1060) (col. 7, lines 1-21; col. 10, line 42 – col. 11, line 45; col. 16, lines 4-27) wherein:

a user deleting (i.e. skipping, forwarding, suppressing, or indicating dislike) an item of content (i.e. tracks or advertisements) from the base channel (i.e. the user can press the skip forward button once or multiple times; the user can press the dislike button; the user can press the suppress commercial button) (col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45) is automatically switched to a first side channel (i.e. modified playlist excluding selected deleted items; Fig. 5, 550; Fig. 6, 650; Fig. 10, 1080) that incorporates a majority of items from the playlist of the base channel and substitute items in the style of the base channel (i.e. representing the style of the stream sequence provider by virtue of playing of the same type of

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audio i.e. jazz or classical) (col. 7, lines 9-14; col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45);

the user further deleting an item of content from the first side channel (i.e. skipping forward twice; the user presses 'skip forward' indicating 'not satisfied' with current song (track E) after already pressing skip while on track D; Fig. 6, 650; col. 12, lines 37-67)) being automatically swirled to a second side channel that incorporates a majority of items from the playlist of the first side channel and substitute items (i.e. modified playlist (Fig. 6, 650) comprises tracks F-J after the second user skip, eliminating the remaining part of track E) in the style of the base channel (i.e. representing the style of the stream sequence provider by virtue of playing of the same type of audio i.e. jazz or classical) (col. 7, lines 9-14; col. 8, lines 32-61; col. 12, line 18 – col. 13, line 21; col. 16, lines 37-45).

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

18. Any response to this action should be mailed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Or faxed to:

(571) 273-8300 (for formal communications intended for entry)

Or call:

(571) 272-2600 (for customer service assistance)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa Hashem whose telephone number is (571) 272-7542. The examiner can normally be reached on M-F 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-2600.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Lisa Hashem/
Examiner, Art Unit 2614
January 31, 2009